



June 13, 2000

Mr. Scott A. Durfee  
General Counsel  
Office of the District Attorney  
Harris County  
1201 Franklin, Suite 600  
Houston, Texas 77002

OR2000-2307

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136063.

The Harris County District Attorney (the “district attorney”) received a written request for records pertaining to the investigation of an alleged pyramid scheme and the officers who participated in the service of a related search and arrest warrant. You state that some of the requested information will be made available to the requestor. You contend, however, that certain other requested records are excepted from required public disclosure pursuant to sections 552.103 and 552.108 of the Government Code. Specifically, you seek to withhold the identity of all peace officers present during the service of the search warrant, the job related experience and history of each such officer, and a certain document that pertains to the service of the warrant.

The test for establishing that section 552.103(a) of the Government Code, the “litigation exception,” applies to requested information is a two-prong showing that (1) litigation is pending or reasonably anticipated at the time the request for the information is received, and (2) the information at issue is related to that litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997), *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref’d n.r.e.). You inform us that criminal litigation regarding the prosecution of the criminal enterprise is currently pending. Assuming such is still the case, we conclude from our review of the documents at issue that you have met your burden of establishing that litigation regarding these matters was pending on the date the district attorney received the public information request and that the records at issue “relate” to that litigation for purposes of section 552.103. The district attorney

therefore may withhold the information at issue at this time pursuant to section 552.103 of the Government Code.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

***Open Records Division***

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<sup>1</sup>Because we resolve your request under section 552.103, we need not address the applicability of section 552.108.

Ref: ID# 136063

Encl. Submitted documents

cc: Ms. Billie Pearl McCord  
Box 3205  
Victoria, Texas 77903  
(w/o enclosures)